

HOUSE BILL No. 1032

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14-18-2; IC 31-15-10-1; IC 31-16-11-1; IC 31-17-4-3; IC 31-18-3-5; IC 31-18-3-13.

Synopsis: Escrow of costs and fees. Requires that attorney's fees and other costs required in a paternity, divorce, custody, visitation, or support case be held in escrow until the order is a final unappealable order.

Effective: July 1, 2003.

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January 7, 2003, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1032

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-14-18-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The court may
3 order a party to pay:

4 (1) a reasonable amount for the cost to the other party of
5 maintaining an action under this article; and

6 (2) a reasonable amount for attorney's fees, including amounts for
7 legal services provided and costs incurred, before the
8 commencement of the proceedings or after entry of judgment.

9 (b) ~~The court may order the amount~~ **An order issued under**
10 **subsection (a) must require that payment of costs and attorney's**
11 **fees be held in escrow until all appeals from an order issued under**
12 **this article are exhausted or the time for filing a notice of appeal**
13 **and motion to correct error has expired. After all appeals are**
14 **exhausted or the time for filing a notice of appeal and motion to**
15 **correct error has expired, the court shall:**

16 (1) **distribute the amounts held in escrow under this**
17 **subsection in accord with a final appellate order; or**

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(2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.

The court shall order unpaid amounts to be paid directly to the attorney, who may enforce the order in the attorney's name.

(c) Except as otherwise provided by law, neither costs nor attorney's fees may be taxed against an agency or the ~~agency's~~ agents **of an agency** that is authorized to maintain proceedings under this article by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21.

SECTION 2. IC 31-15-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) ~~The court may order the amount~~ **An order issued under subsection (a) must require that payment of costs, attorney's fees, and mediation services be held in escrow until all appeals from an order issued under this article are exhausted or the time for filing a notice of appeal and motion to correct error has expired. After all appeals are exhausted or the time for filing a notice of appeal and motion to correct error has expired, the court shall:**

(1) distribute the amounts held in escrow under this subsection in accord with a final appellate order; or

(2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.

The court shall order unpaid amounts to be paid directly to the attorney, who may enforce the order in the attorney's name.

SECTION 3. IC 31-16-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for:

(1) the cost to the other party of maintaining or defending any proceeding under this chapter, IC 31-16-2 through IC 31-16-10, or IC 31-16-12;

(2) attorney's fees; and

(3) mediation services;

including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) ~~The court may order the amount~~ **An order issued under subsection (a) must require that payment of costs, attorney's fees, and mediation services be held in escrow until all appeals from an**

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order issued under this article are exhausted or the time for filing a notice of appeal and motion to correct error has expired. After all appeals are exhausted or the time for filing a notice of appeal and motion to correct error has expired, the court shall:

(1) distribute the amounts held in escrow under this subsection in accord with a final appellate order; or

(2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.

The court shall order unpaid amounts to be paid directly to the attorney, who may enforce the order in the attorney's name.

SECTION 4. IC 31-17-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) In any action filed to enforce or modify an order granting or denying visitation rights, a court may award:

(1) reasonable attorney's fees;

(2) court costs; and

(3) other reasonable expenses of litigation.

(b) In determining whether to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation, the court may consider among other factors:

(1) whether the petitioner substantially prevailed and whether the court found that the respondent knowingly or intentionally violated an order granting or denying rights; and

(2) whether the respondent substantially prevailed and the court found that the action was frivolous or vexatious.

(c) An order issued under subsection (a) must require that payment of costs, attorney's fees, and other reasonable expenses of litigation be held in escrow until all appeals from an order issued under this article are exhausted or the time for filing a notice of appeal and motion to correct error has expired. After all appeals are exhausted or the time for filing a notice of appeal and motion to correct error has expired, the court shall:

(1) distribute the amounts held in escrow under this subsection in accord with a final appellate order; or

(2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.

The court shall order unpaid amounts to be paid directly to the attorney, who may enforce the order in the attorney's name.

SECTION 5. IC 31-18-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) When a responding Indiana tribunal receives a petition or comparable pleading from an initiating tribunal or directly under section 1(c) of this chapter,

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the responding tribunal shall:

(1) file the petition or pleading; and

(2) notify the petitioner by first class mail of the location and date that the petition or comparable pleading was filed.

(b) A responding Indiana tribunal, to the extent otherwise authorized by law, may do one (1) or more of the following:

(1) Issue or enforce a support order, modify a child support order, or enter a judgment to establish paternity.

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance.

(3) Order income withholding.

(4) Determine the amount of any arrearages and specify a method of payment.

(5) Enforce orders by civil or criminal contempt, or both.

(6) Set aside property for satisfaction of the support order.

(7) Place liens and order execution on the obligor's property.

(8) Order an obligor to keep a tribunal informed of the obligor's current:

(A) residential address;

(B) telephone number;

(C) income payor;

(D) address of employment; and

(E) telephone number at the place of employment.

(9) Issue a bench warrant or body attachment for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal, and enter the bench warrant in any local and state computer systems for criminal warrants.

(10) Order the obligor to seek appropriate employment by specified methods.

(11) Award reasonable attorney's fees and other fees and costs.

(12) As appropriate, grant any other available remedy under federal or state law.

(c) A responding Indiana tribunal shall include in:

(1) a support order issued under this article; or

(2) the documents accompanying the order;

the calculations upon which the support order is based.

(d) A responding Indiana tribunal may not condition the payment of a support order issued under this article upon a party's compliance with provisions for visitation.

(e) If a responding Indiana tribunal issues an order under this article, the Indiana tribunal shall send a copy of the order by first class mail to the:

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- (1) petitioner;
- (2) respondent; and
- (3) initiating tribunal, if any.

(f) An order issued under subsection (b)(11) must require that payment of costs and attorney's fees be held in escrow until all appeals from an order issued under this article are exhausted or the time for filing a notice of appeal and motion to correct error has expired. After all appeals are exhausted or the time for filing a notice of appeal and motion to correct error has expired, the court shall:

- (1) distribute the amounts held in escrow under this subsection in accord with a final appellate order; or**
- (2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.**

The court shall order unpaid amounts to be paid directly to the attorney, who may enforce the order in the attorney's name.

SECTION 6. IC 31-18-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The petitioner or Title IV-D agent, or both, may not be required to pay a filing fee.

(b) Whenever appropriate, a responding tribunal may assess against either party all or part of the following:

- (1) filing fees;
- (2) reasonable attorney's fees;
- (3) necessary travel expenses;
- (4) blood or genetic testing costs; and
- (5) any other reasonable expenses incurred by the party and their witnesses.

(c) The tribunal may not assess costs described in subsection (b) against the obligee or the support enforcement agency of either the initiating or the responding state, except as otherwise provided by law.

~~(d) Attorney's fees may be ordered. If attorney's fees are ordered, the court shall order the fees~~ **An order issued under subsection (b) must require that payment of fees, costs, and expenses be held in escrow until all appeals from an order issued under this article are exhausted or the time for filing a notice of appeal and motion to correct error has expired. After all appeals are exhausted or the time for filing a notice of appeal and motion to correct error has expired, the court shall:**

- (1) distribute the amounts held in escrow under this subsection in accord with a final appellate order; or**
- (2) if the original order has not been overturned or altered on appeal, release the funds held in escrow to the attorney.**

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1 **The court shall order unpaid amounts** to be paid directly to the
2 attorney, who may enforce the order in the attorney's own name.
3 However, payment of support owed to the obligee has priority over
4 fees, costs, and expenses.

5 (e) The tribunal shall order the payment of costs and reasonable
6 attorney's fees if the tribunal determines that a hearing was requested
7 primarily as the result of delay. In a proceeding under IC 31-18-6, a
8 hearing is presumed to have been requested primarily for delay if a
9 registered support order is confirmed or enforced without change.

10 SECTION 7. [EFFECTIVE JULY 1, 2003] **This act applies to an**
11 **order for fees, costs, or other expenses entered after June 30, 2003.**

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